

**MINUTES
DECEMBER 1, 2006**

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:09 a.m., on Friday, December 1, 2006, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Joseph Russell, Don Marble, Heidi Kaiser, Gayle Skunkcap, Bill Rossbach, Robin Shropshire, and Kim Lacey (via telephone)

Board Attorney Present: Katherine Orr, Attorney General's Office, Department of Justice

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Richard Oppen, Director; Tom Livers, Deputy Director; Tom Ellerhoff, Director's Office; John North, Chief Legal Counsel; Claudia Massman, Legal; Jane Amdahl, Legal; Keith Christie, Legal; James Madden, Legal; John Arrigo, Administrator, Enforcement Division; Art Compton, Administrator, Planning, Prevention & Assistance Division (PPAD); Bob Bukantis, PPAD; Christian Levine, PPAD; Steve Welch, Administrator, Permitting & Compliance Division (PCD); Judy Hanson, PCD; Don Vidrine, Air Resources Management Bureau (ARMB), PCD; Charles Homer, PCD; David Klemp, ARMB, PCD; Bonnie Lovelace, Water Protection Bureau (WPB), PCD; Kari Smith, WPB, PCD; Jon Dilliard, Public Water Supply and Subdivisions Bureau (PWS), PCD; Steve Kilbreath, PWS, PCD; Warren McCullough, Environmental Management Bureau, PCD; Neil Harrington, Industrial and Energy Minerals Bureau, PCD; David Bowers, Hazardous Waste Site Cleanup Bureau, Remediation Division

Interested Persons Present (Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.): J. Chris Pfahl, ASARCO; Glenn Oppel, Montana Realtors; Robin Mequire, Montana Environmental Information Center; Don Allen, Western Environmental Trade Association

I.A.1 Review and approve September 15, 2006, meeting minutes.

Chairman Russell called for a motion to approve the September 15 meeting minutes. Ms. Lacey MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.

I.A.2 Review and approve October 11, 2006, teleconference minutes.

Chairman Russell called for a motion to approve the October 11 meeting minutes. Ms. Kaiser MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

I.A.3 Review and approve October 16, 2006, teleconference minutes.

Chairman Russell called for a motion to approve the October 16 meeting minutes. Ms. Kaiser MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

I.B Set 2007 Meeting Schedule

Chairman Russell explained that the March dates landed on a Wednesday and a Thursday, and that a decision needed to be made for one or the other date. After some discussion, he called for a motion to accept the March 29 date. Ms. Lacey MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

Chairman Russell called for a motion to adopt the entire proposed schedule of January 26, March 29, June 1, July 27, September 28, and November 30, for 2007. Ms. Lacey MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.

II.A.1.a In the matter of CR Kendall Corporation's request for a hearing to appeal DEQ's decision to deny a minor permit amendment under the Metal Mine Reclamation Act, BER 2002-09 MM.

Ms. Orr had nothing further to add beyond the information provided on the agenda.

II.A.1.b In the matter of violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ.

Ms. Orr had nothing further to add beyond the information provided on the agenda.

II.A.1.c In the matter of the issuance of the Air Quality Permit for the Roundup Power Project, Permit No. 3182-00, BER 2003-04 AQ.

- Ms. Orr had nothing further to add beyond the information provided on the agenda.
- II.A.1.d In the matter of the request for hearing of Bruce Wood, d/b/a Big Sky Ready Mix, regarding a notice of violations of the Opencut Mining Act, BER 2006-06 OC.
- Ms. Orr added that a hearing was held November 14 and she hoped to have her final decision ready mid-December.
- II.A.1.e In the matter of the request for hearing of Tom and Noel Gorton, d/b/a Creston Top Soil, regarding a notice of violations of the Opencut Mining Act, BER 2006-07 OC.
- Ms. Orr said the parties were very close to an agreement.
- II.A.1.f In the matter of the request for hearing of Kountry Korner Enterprises, d/b/a Kountry Korner Café, regarding violations of the Montana Public Water Supply Laws, BER 2006-09 PWS.
- Ms. Orr had nothing further to add beyond the information provided on the agenda.
- II.A.1.g In the matter of the Montana Environmental Information Center's appeal of Air Quality Permit No. 3182-01, issued for the Roundup Power Project, BER 2005-21 AQ.
- Ms. Orr noted that cross motions for summary judgment were also filed.
- II.A.1.h In the matter of the appeal by Willow Creek Sewer District regarding violations of the Water Quality Act, BER 2006-13 WQ.
- Ms. Orr had nothing further to add beyond the information provided on the agenda.
- II.A.1.i In the matter of the request for hearing of the Teton County Airport Commission regarding violations of the Montana Underground Storage Tank Act at the Choteau Airport, BER 2006-15 UST.
- Ms. Orr said a teleconference was held November 16 and that a partial motion for summary judgment was pending. She also noted that the parties were attempting to settle the case.
- II.A.1.j In the matter of the request for hearing of U.S. Customs and Border Protection regarding a notice of violation concerning the Del Bonita Border Station, BER 2006-16 PWS.
- Ms. Orr said there was a request for a stay of 90 days from November 22.

- II.A.1.k | In the matter of the Notice of Appeal and Request for Hearing of the Citizens Awareness Network, Women's Voices for the Earth, and the Clark Fork Coalition regarding DEQ's approval of the Thompson River CO-Gen, LLC, Air Quality Permit No. 3175-04, BER 2006-18 AQ.
- Ms. Orr said the DEQ had filed a motion for partial dismissal for failure to state a claim, as well as a motion for summary judgment.
- II.B.1 | Cases in Litigation -- In the matter of the Petition for Review of Hazardous Waste Final Permit No. MTHWP-03-01 issued to Flying J Petroleums, Inc., BER 2003-14 HW.
- Ms. Orr explained that she had filed a motion to dismiss the Board as a party because she believed it was inappropriate for the Board to be a direct party.
- II.C.1 | Gallatin ORW Briefing
- Mr. Livers said the DEQ originally hoped to have the Board's action ahead of the Legislative session so that if the Board chose to designate that portion of the Gallatin River as an outstanding resource water, it could then go to the Legislature as the final authority to make the determination on that designation. He said there was still time for the Board to act at the January meeting and still have it go before the Legislature. Mr. Livers cited developments with regard to takings as the main reason for the delay, and provided further details of the issues.
- Chairman Russell called for public comment regarding the matter. No one responded.
- II.C.2 | Legislative Briefing
- Mr. Livers explained that some general revisions were being proposed to the Legislature regarding the Metal Mine Reclamation Act, motivated in part by the metal mine rulemaking the Board had tabled earlier in the year. Mr. Livers described the major provisions of the bill.
- Mr. Livers identified two other bills of interest to the Board: 1) raising the Water Quality Act fee cap; and 2) a housekeeping amendment to revise the adoption process for the Solid Waste Management Plan.
- Ms. Lacey inquired about funds for the issues at Fort Belknap. Mr. Livers discussed the proposal for water treatment in Swift Gulch.
- III.A.1 | In the matter of final action regarding the repeal of ARM 17.30.630(2) to revoke temporary water quality standards for portions of the Mike Horse Creek, Beartrap Creek, and the Upper Blackfoot River.
- Mr. Livers said the Department is recommending that the Board adopt a final rule

to repeal and revoke the temporary water quality standards.

Mr. Bowers reviewed the Department's testimony, discussed the Board's responses to comments, and provided a summary of the work performed at the site during 2006. He also addressed the work being proposed under the trust fund for fiscal year 2007 and provided a brief update on the Engineering Evaluation/Cost Analysis (EE/CA).

Mr. Pfahl said ASARCO will be voluntarily upgrading the water treatment system to meet B-1 standards. He said ASARCO is in the process of designing a power line to the site, and that a building will be constructed. Discussion took place regarding ASARCO's testimony at the hearing.

Chairman Russell called for public comment on the rulemaking. No one responded.

Chairman Russell called for a motion to amend the rule and to adopt the Presiding Officer's report, the responses to comments, and the 521/311 analyses. Mr. Rossbach MOVED. Mr. Skunkcap SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.B.1 In the matter of the DEQ's request to initiate rulemaking to amend ARM 17.30.1303 and 17.30.1330 to adopt revised federal concentrated animal feeding operations rules.

Ms. Smith explained that the revisions would extend certain dates for compliance, consistent with federal requirements. She said the EPA's revised CAFO rules became effective February 10, 2006. Ms. Smith provided details regarding the deadlines and said the Department would not contemplate a hearing. Due to the nature of the revisions. Further discussion took place regarding the rules. No members of the public were present for comment.

Chairman Russell called for a motion to initiate the rulemaking and to appoint Ms. Orr to preside over the matter. Ms. Kaiser MOVED. Mr. Skunkcap SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.1 In the matter of the request for hearing of Jay Gasvoda, d/b/a Gasvoda Construction, BER 2005-17 OC, regarding the Notice of Violation and Statement of Proposed Penalty issued by DEQ on September 14, 2005.

Chairman Russell called for a motion to authorize him to sign the order of dismissal. Mr. Marble MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.2 In the matter of the request for hearing of James McDonald, d/b/a McDonald Ready Mix, regarding violations of the Opencut Mining Act, BER 2006-05 OC.

Chairman Russell called for a motion to authorize him to sign the order of

- dismissal. Ms. Lacey MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.C.3 In the matter of the request for hearing of Michael Golembeski regarding the permit process of the Paveco Gravel Pit, BER 2006-14 OC.
- Ms. Orr summarized the written exceptions submitted by Mr. Golembeski.
- Chairman Russell called for a motion to authorize him to sign the order of dismissal. Mr. Marble MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.C.4 In the matter of the request for hearing of Robert Klein, Clancy School District No. 1, BER 2006-17 PWS, regarding violations of the Montana Public Water Supply Laws.
- Chairman Russell called for a motion to authorize him to sign the order of dismissal. Mr. Marble MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.C.5 In the matter of the request for hearing of On Your Way, Inc., regarding violations of the Montana Underground Storage Tank Act, BER 2006-19 UST.
- Chairman Russell called for a motion to authorize him to sign the order of dismissal. Mr. Marble MOVED. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.C.6 In the matter of violations of the Metal Mine Reclamation Act by David Olmstead, BER 2006-26 MM.
- Chairman Russell called for a motion to authorize him to sign the order of dismissal. Ms. Shropshire MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.D.1 In the matter of violations of the Montana Underground Storage Tank Act at Elliston Store, BER 2006-20 UST.
- Chairman Russell called for a motion to appoint Ms. Orr permanent hearing examiner for this matter. Ms. Kaiser MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.D.2 In the matter of violations of the Metal Mine Reclamation Act by Marty J. and Sinda M. Puryer, as individuals and d/b/a Paul Kurth Mining, for the failure to post reclamation bond, BER 2006-21 MM.
- Chairman Russell called for a motion to appoint Ms. Orr permanent hearing examiner for this matter. Mr. Marble MOVED. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.D.3 In the matter of the appeal by Dan Fuchs, Broken 7 Subdivision, regarding Gallatin City-County Health Department's denial of a request to change a provision of the original certificate of subdivision approval, BER 2006-22 SUB.
- III.D.4 In the matter of the appeal by the City of Bozeman regarding the DEQ's final decision for MPDES Permit No. MT0022608, BER 2006-23 WQ.
- III.D.5 In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by BMP Investments, Inc., at the Bull Mountains Mine #1, BER 2006-24 SM.
- III.D.6 In the matter of the appeal by Wesley Gillespie regarding the 2006 fee for MPDES Permit No. MTG370275, BER 2006-25 WQ.
- III.D.7 In the matter of the appeal by the Butte-Silver Bow Public Works Department, regarding Final MPDES Permit No. MT0022012, BER 2006-27 WQ.
- III.D.8 In the matter of violations of the Water Quality Act at Cenex Harvest States fueling facility on Highway 83, Condon, BER 2006-28 WQ.
- III.D.9 In the matter of violations of the Water Quality Act and the Public Water Supply Laws by Brady County Water and Sewer District, BER 2006-29 WQ.

Chairman Russell called for a motion to appoint Ms. Orr permanent hearing examiner for cases 2006-22, 2006-23, 2006-24, 2006-25, 2006-27, 2006-28 and 2006-29. Mr. Rossbach MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

IV. General Public Comment

Chairman Russell called for general public comment. No members of the public were in attendance.

Ms. Lacey inquired about Otis Packwood and the issues he brought forward at the Gallatin ORW hearing. Mr. Arrigo provided an update. Further discussion took place regarding the matter.

V. Adjournment

Chairman Russell called for a motion to adjourn. Ms. Lacey MOVED. Ms. Shropshire SECONDED the motion. The meeting adjourned at 10:49 a.m. by a unanimous VOTE.

Board of Environmental Review December 1, 2006, minutes approved:

JOSEPH W. RUSSELL, M.P.H.
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

DATE